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Supreme Court, U.S.  
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

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LOIS MILLSPAUGH and TINA DYSON,

Petitioners

v.

COUNTY DEPARTMENT OF  
PUBLIC WELFARE OF WABASH  
COUNTY and  
MANETTA TUCKER

Respondents

---

BRIEF IN OPPOSITION TO THE PETITION  
FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Is a caseworker entitled to absolute immunity under 42 U.S.C. 1983 for initiation of child in need of services proceedings, testimony at the proceedings and activities related to presenting the case for decision by a State Court?

2. For any activities which are not protected by absolute immunity, did the caseworker act in an objectively reasonable manner or knowingly violate the law?

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\* All of the parties in the United States Court of Appeals for the Seventh Circuit are listed in the caption. Defendant, Manetta Tucker, was formerly known as Manetta Abshear.

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**I. CITATIONS OF THE  
OPINIONS AND JUDGMENTS  
DELIVERED IN THE COURTS BELOW.**

The Opinion of the United States Court of Appeals for the Seventh Circuit was issued on July 15, 1991 and is reported as follows:

Lois Millspaugh and Tina Dyson vs. County Department of Public Welfare of Wabash County, et al., 937 F.2d 1172 (7th Cir. 1991).

The decision of the United States District Court for the Northern District of Indiana, South Bend Division, Robert L. Miller, Jr., Judge, is reported as follows:

Lois Millspaugh and Tina Dyson vs. County Department of Public Welfare of Wabash County, et al., 746 F.Supp. 832 (N.D. Ind. 1990)

## II. STATEMENT OF JURISDICTION

The Petitioners brought an action in the District Court pursuant to 42 U.S.C. 1983 against the County Welfare Department and caseworker alleging jurisdiction under 28 U.S.C. 1331. The Petitioners alleged a violation of the First, Fourth, and Fourteenth Amendments to the United States Constitution. The District Court entered Summary Judgment and a final judgment in favor of both Defendants and against the Petitioners. This judgment was appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit entered its decision on July 15, 1991 affirming the District Court's judgment. The Petitioners filed a Petition for Writ of Certiorari in this Court on October 15, 1991. This Court has the

discretion to hear this matter pursuant to 28 U.S.C. 1254(1).

**III. THE CONSTITUTIONAL STATUTORY PROVISIONS**

The constitutional statutory provisions are set out in Petition for Writ of Certiorari.

**IV. STATEMENT OF THE CASE**

Respondent asserts that there are omissions and inaccuracies in the Petitioner's Statement of the Case and therefore submits an entire Statement of the Case as a part of this Brief. These facts are taken from a combined summary of the facts given by the District Court and Circuit Court of Appeals found in Petitioner's Appendix.

**A. INVESTIGATION AND FILING OF THE CHINS PETITION.**

Manetta Tucker was a caseworker for the Wabash County Welfare

Department during the relevant dates related to this action. Ms. Tucker's responsibilities included investigation, initiation and processing of child in need of services petitioners (CHINS). (App. 24) The Department received a complaint concerning the children of Lois Millspaugh and Tina Dyson. The investigation began with an anonymous telephone call on February 2, 1984 reporting that the Petitioners' children were hungry. (App. 4, 26) Ms. Tucker spoke to the schools where the children had enrolled and was told that the girls were taken out of school without any notice as to where the girls were going or how they would be educated. (App. 4, 27) Indeed the Petitioners had made no plans to enroll the children in another school. (App. 3) The Petitioners admitted that they

did not have the money to enroll the children in correspondence school.

Furthermore, they could not explain, even today, how they were going to supply education for the children.

(App. 4, 18, 19, 36)

Ms. Tucker learned that the Petitioners had been living in a group environment in a house on Sivey Street and had stripped the interior of their house so that it was uninhabitable and moved to Kokomo. (App. 3, 27) Manetta Tucker personally visited the residence on Sivey Street and verified that it had been stripped of not only all furniture but even the kitchen sink.

(App. 3, 27) She contacted the Reverend Bob Merrill in Kokomo who told her that the group arrived without money, without food and without clothing except for what they were wearing, indeed, they had nothing but

blankets. (App. 4, 27) the group was housed with the Reverend for a day and moved on to Indianapolis. (App. 4, 28)

On February 8, 1984, Manetta Tucker and the attorney for the Public Welfare Department, Steve Downs, went to Court and filed a petition alleging the Petitioners' daughters to be children in need of services and requested a detention order. (App. 27, 28) The Judge of the Wabash Circuit Court issued the detention order authorizing the temporary removal of the children and permitting their detention until a hearing set for February 10, 1984. (App. 28) The detention order gave the notice for the date and time of the detention hearing. The detention order was teletyped to Indianapolis where the children were picked up by the police and placed in a home. (App. 28) At the time the

children were taken by the police, the Petitioners were shown the detention order. It is not clear whether the Petitioners saw the date and time for the detention hearing. (App. 28) The Petitioners failed to appear for the detention hearing. At the detention hearing the Court found that the welfare of the children required their detention until further order of the Court. (App. 28)

The day after the Petitioners' children were removed, they traveled to Seymour, Indiana, south of Indianapolis, and made no effort to contact the Welfare Department to tell the Department where they were or where they were going. (App. 5, 28, 29)

**B. THE PETITIONERS TRAVELED AROUND THE COUNTRY AFTER THEIR CHILDREN WERE DETAINED.**

After traveling to Seymour, Indiana, the Petitioners left and went

to Cleveland, Tennessee. (App. 29) Lois Millspaugh called the Welfare Department and spoke to Ms. Tucker on February 17th, nine days after the children were taken, but refused to tell her where they were going and refused to come back and participate in the proceedings. (App. 5, 29, 30) She indicated that the group was traveling under God's direction and that they could receive messages through Paul Wildridge.

After leaving Cleveland, Tennessee, the Petitioners went to Washington, D.C. and thereafter to Virginia Beach, Virginia; Roanoke Rapids, North Carolina; Jacksonville, Florida; Miami, Florida; Key West, Florida; Crystal River, Florida; Tallahassee, Florida; back to North Carolina; back to Virginia; and then to Ohio. (App. 6, 30)

Finally on May 25, 1984, Lois Millspaugh returned to Wabash and met with Manetta Tucker. (App. 34) Tina Dyson did not return at that time. This was the first time that either Petitioner attempted to see her daughters since the detention order on February 8, 1984. On May 25, Ms. Millspaugh also went to the offices of Attorney John Johnston, but Lois Millspaugh did not engage Mr. Johnston's services at that time. (App. 34) Mr. Johnston was employed by the Petitioners in October, 1984 and entered his appearance on December 13, 1984. (App. 37)

#### C. STATE COURT PROCEEDINGS.

In the detention hearing of February 10, 1984, the Court found that the welfare of the children required their detention until further order of

the home study on Charles Millspaugh and determined that the girls should be placed with their father. On November 30, 1984, the Court scheduled a dispositional hearing for December 14, 1984. The day before John Johnston entered his appearance for both Petitioners and moved for a change of venue from the Judge. (App. 37, 38)

On December 14th, the Court set aside the determinations previously made and set the matter for hearing on December 17th. Contrary to the suggestion in the Petition for Writ, the Court did not make a finding that the Petitioners' constitutional rights had been violated. The Court found that the Petitioners should have been notified by publication pursuant to the Indiana Trial Rules since the Petitioners could not be located to serve them with process. (App. 37)

The United States District Court noted in its decision that publication in Indiana would hardly give them better notice of the hearings as they traveled around the country. (App. 88)

On January 2, 1985, the Honorable Thomas Wright qualified as Judge and assumed jurisdiction. On July 8, 1985, Judge Wright reversed the detention order previously entered and remanded the unemancipated children to their mothers' care. (App. 38)

After John Johnston had entered his appearance on behalf of the Petitioners, both the Petitioners continued to travel. (App. 7, 38, 39)

Lois Millspaugh traveled to Switzerland, England, France, Italy, Greece and Jerusalem. Tina Dyson initially continued traveling but returned to Wabash in May of 1985. Lois Millspaugh continued to travel to

the Court. (App. 28) The initial hearing for both Petitioners was set for March 16th. (App. 31) A summons was sent on March 9th to Paul Wildridge, the individual designated by the Petitioners. The summons was returned on March 12th indicating "not in the bailiwick." (App. 30, 31)

On March 16, 1984, the Court conducted the initial hearings. In the Millspaugh case, Charles Millspaugh appeared at the hearing and denied that the Millspaugh girls were children in need of services. Both of the Petitioners, Lois Millspaugh and Tina Dyson, failed to appear at the hearing for their children. The Court found that they had actual notice of the date and time of the hearing and a finding was made as to the Dyson case, but the fact finding hearing was reset for April 27th on the Millspaugh case since

the father had appeared. (App. 6, 7, 31) Both of the Petitioners admitted that they had actual knowledge of the hearings but chose not to attend. (App. 6, 7, 31, 32) After the hearing, the Petitioners called Manetta Tucker to discuss what had occurred at the hearing. (App. 6, 7 31) Both in this conversation and in later conversations, the Petitioners told Manetta Tucker that they could not return to participate in the Court proceedings. (App. 6, 7, 31)

The fact finding hearing for Tina Dyson was conducted on March 23 and she did not appear. (App. 32, 33) On April 27, 1984, the Court conducted the fact finding hearing for the Millspaugh case and took the matter under advisement pending a home study on Charles Millspaugh. (App. 33) On November 29, 1984, the Court received

Tel Aviv, Amsterdam, Athens, Bangkok, Seoul, Honolulu and Waikiki Beach.

(App. 7, 38, 39) Lois Millspaugh was in Waikiki Beach when she learned from Mr. Johnston that she had won custody of her daughter and that she would have thirty (30) days to return to regain custody. (App. 8) After leaving Waikiki Beach, she went to Silver Springs, Maryland, where she stayed for several days and then finally went back to Wabash to take custody of her daughter. (App. 8, 38, 39)

**D. ADDITIONAL PERCEIVED MISSTATEMENTS IN THE PETITION FOR WRIT OF CERTIORARI.**

Respondents would contend that Petitioners' Statement of the Case contains perceived misstatements or inaccuracies in addition to the omissions of important facts as described in this Statement of the

Case. Respondent would contend that the evidence does not support the allegations that an affidavit was submitted which knowingly contained false statements and unsupported conclusions. (Petition, p. 14) Nor is there evidence to support the Petitioner's suggestions and conclusions that there was not enough information to support the petition or demonstrate that the children were in need. (Petition 14, 15) In fact, both the District Court and the Court of Appeals held that Manetta Tucker's conduct in seeking the detention order was objectively reasonable under the circumstances which existed and that not only reasonable cause but substantial cause existed to initiate the proceedings. (App. 17-20, 66-68)

The suggestion that a series of hearings were held without notice is

also inaccurate. (Petition 16) The Petitioners admitted that they had actual notice of the initial hearing and indeed called to find out what happened after the hearing. (App. 30) Additionally the state court found that the Petitioners had actual notice but failed to appear. (App. 31) The Petitioners indicated on numerous occasions that they had no intention of participating in the proceedings and continued to travel around the country without indicating where they were going making normal service of process impossible. The Petitioners claim that they designated Paul Wildridge to receive process, but when service was attempted on Paul Wildridge, it was returned. (App. 30)

Furthermore, there is no evidence in the record that Manetta Tucker ever suggested or told the Petitioners that

they would not regain custody of their children unless they abandoned their religious mission. (Petition 16, 17)

Indeed the District Court so held in its decision. (App. 69, 70)

Furthermore there is no evidence to support the contention that Ms. Tucker tried to change the children's religious beliefs. (Petition 17) The Seventh Circuit also noted that the Petitioners' religion did not shield them from their parental obligations.

(App. 19)

#### V. SUMMARY OF THE ARGUMENT

Respondent would contend that this Court should not accept review on a Writ of Certiorari in this matter not only because the Seventh Circuit Court of Appeals and the District Court correctly decided the issues pursuant to the decisions of this Court; but

also since none of the considerations in Rule 10 of the Supreme Court Rules are present in this case.

The District Court determined that even under the Doctrine of Qualified Immunity that Manetta Tucker would be protected in this case. The District Court held that her conduct was objectively reasonable in light of the circumstances and that the Petitioners had failed to point out any violation of an established right in a particularized sense which was clearly established at the time these events occurred in 1984. The Petitioners have consistently argued throughout the course of this litigation that general rights of parenting are involved. This Court has already rejected similar arguments. The issue is not the general right of parenting, the issue is whether her conduct was objectively

reasonable or whether the Defendant would have known in 1984 that her conduct, under the circumstances which existed at the time, violated the Petitioners' constitutional rights. Thus, the Petitioners' characterization of the question presented for review is inaccurate under prior decisions of this Court.

There is no conflict in the circuits which would affect the outcome of this case. There are numerous circuit opinions which have accepted absolute immunity for a CHINS caseworker initiating the hearings, testifying at court proceedings and related conduct in preparing and submitting cases to the court. There is no conflict in the circuits for these allegations. The conflict in the circuits relates to the application of absolute immunity for allegations

concerning the investigation, taking custody and filing of a detention petition prior to the actual initiation of the CHINS action. The conflict in the circuits is of no assistance to the Petitioners in this case since the Seventh Circuit determined that qualified immunity applied to the investigation, obtaining the detention order and actual taking of custody of the child. The Fourth, Sixth and Ninth Circuits have found absolute immunity for these allegations. In all other aspects the Seventh Circuit's decision is consistent with the other circuit opinions for absolute immunity.

The Seventh Circuit opinion is consistent with this court's opinions for absolute immunity. The Circuit opinion found that the CHINS caseworker acts as both a prosecutor and witness in court proceedings and related

conduct. The Seventh Circuit utilized the functional approach espoused by this Court to determine whether the activities were integrally related to the judicial process and whether the harm depends upon judicial action. For all other activities the Court analyzed the actions and allegations based upon qualified immunity.

Finally, this case does not raise a new issue which needs to be decided by this Court. Petitioners suggest that this Court should decide whether the Brady v. Maryland rule, requiring the state to alert the adversary or court to exculpatory evidence, should be applied to civil cases. The Seventh Circuit did not reach this issue since it followed this Court's previous decisions that neither a prosecutor nor a witness can be sued under 42 U.S.C. 1983 for false testimony or failure to

provide the court with exculpatory evidence. As such there is no need for this court to decide the issue in this case.

**VI. ARGUMENT IN OPPOSITION TO THE  
PETITION FOR WRIT OF CERTIORARI**

**A. THERE IS NO CONFLICT AMONG  
THE CIRCUITS AFFECTING THIS  
CASE.**

The Seventh Circuit decided that the Defendant, as a CHINS caseworker, was entitled to absolute immunity for all of the Petitioners' allegations relating to testimony, presenting the case to the court, and other activities related to the court proceedings. The Court determined that the allegations of failure to give exculpatory information to the Court, the allegations of pursuing the litigation after it should have been clear the mothers were entitled to custody,

allegations concerning the motive for pursuing the litigation and allegations relating to adequate notice, would all be covered by absolute immunity. In all of those instances, it was the state court that made the decisions, with the knowledge that the Petitioners were not present in Court, with knowledge that they were not represented and that there was limited communication with the Petitioners. Thus, the Seventh Circuit held consistently with various other circuits that the CHINS caseworker was entitled to absolute immunity for these actions.

Contrary to the suggestion in the Petition for Writ of Certiorari, this approach is not in conflict with other circuits. (Petition 29) The petitioner argues that Hodorowski v. Ray, 844 F.2d 1210 (5th Cir. 1988); and

Austin v. Borel, 830 F.2d 1356 (5th Cir. 1987) are in conflict with the Seventh Circuit approach. These cases provide no support for the petitioner and indeed the Seventh Circuit notes that the Fifth Circuit approach is consistent. (App. 16) The Fifth Circuit has found absolute immunity for allegations involving a caseworker's testimony at a hearing. Stem v. Ahearn, 908 F.2d 1 (5th Cir. 1990) Hodorowski found qualified immunity for the seizure of children without a court order. Id. at 1214. So the court was not involved at all, whereas, in this case the seizure was made with a court order and numerous hearings were held by the state court. Austin involved a verified complaint submitted to obtain custody prior to the initiation of the child in need of services petition. Austin, Supra at 1360, 61, 62. The

Fifth Circuit applied qualified immunity holding that the custody petition did not initiate the proceedings under Louisiana law. Thus, it was more comparable to the police officer in a probable cause hearing for an arrest warrant.

These cases are not inconsistent with the Seventh Circuit holding. The Seventh Circuit relied on qualified immunity for all of the allegations similar to Austin and Hodorowski; that is, for the conduct of investigation, for initiation of the detention proceedings and for the actual taking custody of the children pursuant to the detention order.

Several other circuits have found absolute immunity where the Seventh Circuit applied qualified immunity. This conflict, however, certainly does not help the Petitioners in this case

since these opinions are more beneficial to the caseworker. Absolute immunity totally eliminates any suit against the caseworker. Some of the cases which have found absolute immunity for the investigation and initiation of child custody proceedings are: Coverdell v. Department of Social and Health Services, State of Washington, 834 F.2d 758 (9th Cir. 1987); Meyers v. Contra Costa County Dept. of Social Services, 812 F.2d 1154 (9th Cir. 1987); Vosburg v. Department of Social Services, 884 F.2d 133 (4th Cir. 1989); Salyer v. Patrick, 874 F.2d 374 (6th Cir. 1989); Malchowski v. City of Keene, 787 F.2d 704 (1st Cir. 1986). Thus, although there is a conflict as to one aspect of the Seventh Circuit opinion, it does not justify granting the Writ of Certiorari since the

resolution of the conflict will not change the result in this case.

The Petitioners' suggestion that the Seventh Circuit's decision is in conflict with Babcock v. Tyler, 884 F.2d 497 (9th Cir. 1989), cert. denied 110 Sup. Ct. 1118 (1990), is similarly misplaced. In Babcock the Ninth Circuit found that a caseworker taking custody of the children pursuant to a court order and then placing the children, was absolutely immune under Section 42 U.S.C. 1983. Thus, the decisions are consistent.

As the Seventh Circuit noted, social workers must often act on limited information and if all doubts are resolved in favor of parents then significant damage can occur to the children. This Court has recognized the difficulties of caseworkers in such instances. DeShaney v. Winnebago

County Department of Social Services,

489 U.S. 189 (1989).

In the present case the CHINS caseworker acted as both prosecutor and witness in the state court proceedings. The Seventh Circuit noted that almost all of the Petitioners' allegations against Manetta Tucker depended upon the State Court's decisions. As such all of those allegations were covered by absolute immunity. Thus, there is no conflict among the circuits on any issue which would affect the result in this case. Regardless whether this Court would find absolute or qualified immunity for the initial investigation and child custody, the caseworker would still be entitled to judgment since the Seventh Circuit held that the caseworker's actions were objectively reasonable.

**B. THE SEVENTH CIRCUIT OPINION  
IS CONSISTENT WITH THE  
DECISIONS OF THIS COURT.**

This Court has decided that absolute immunity applies to the acts of a judge, and a prosecutor performing duties related to judicial functions as well as to a witness in court proceedings. Imbler v. Pachtman, 424 U.S. 409 (1976); Butz v. Economou, 438 U.S. 478 (1978); Briscoe v. LaHue, 460 U.S. 325 (1983); Stump v. Sparkman, 435 U.S. 349 (1978); and Burns v. Reed, 111 S.Ct. 1934 (1991). In Burns, this Court's most recent pronouncement, this Court held that a lawyer was absolutely immune from liability while representing the State during a probable cause hearing, but found qualified immunity for legal advise given to a police officer. This Court's functional approach reviews whether the conduct is integrally

related to the judicial process. If the actions are removed from the judicial process or the harm does not depend on judicial decision than qualified immunity applies. Malley v. Briggs, 475 U.S. 335 (1986).

The Circuit Courts of Appeals have found that a CHINS caseworker acts as both a prosecutor in presenting the case to the court, a witness in testifying before the court and further aids the court's jurisdiction by placement, case studied and related activities. The caseworkers need to exercise independent judgment in fulfilling their duties. The caseworker could easily become the "lightening rod" for litigation aimed at the court, as in this case. Furthermore, the caseworker must be able to exercise independent judgment to protect children from abuse, rather

than worry about financially devastating litigation. There are numerous state court hearings and appeals to protect the rights of the parents.

In addition to the Seventh Circuit these circuits have found absolute immunity for the court related duties of the CHINS caseworker or similar positions: Malchowski v. Keene, 787 F.2d 704, 711-14 (1st Cir. 1986); Walden v. Wishengrad, 745 F.2d 149 (2nd Cir. 1984); Vosburg v. Department of Social Services, 884 F.2d 133 (4th Cir. 1989); Stem v. Ahearn, 908 F.2d 1, 6 (5th Cir. 1990); Kurzawa v. Mueller, 732 F.2d 1456 (6th Cir. 1984); Salyer v. Patrick, 874 F.2d 374 (6th Cir. 1989); Meyers v. Contra Costa County Department of Social Services, 812 F.2d 1154 (9th Cir. 1987); Coverdell v.

Department of Social & Health Services,  
834 F.2d 758, 762-65 (9th Cir. 1987).

The Seventh Circuit held that the allegations of false testimony or withholding evidence from the Court was covered by absolute immunity. This is consistent with this Court's decision in Briscoe, Supra, that witnesses are absolutely immune for their testimony at a hearing even if the witness knows the testimony to be false.

Furthermore, this Court in Imbler, Supra, held that a prosecutor was absolutely immune for allegations of withholding exculpatory evidence from a defendant. Indeed, the Seventh Circuit holding is consistent with other circuit opinions including the Eighth Circuit which held withholding or suppressing exculpatory evidence was covered by absolute immunity. Meyers v. Morris, 810 F.2d 1437, 1446 (8th

Cir. 1987); Holt v. Castaneda, 832 F.2d 123 (9th Cir. 1987); Tripati v. INS, 784 F.2d 345 (10th Cir. 1986); Salyer v. Patrick, 874 F.2d 374 (6th Cir. 1989); Babcock v. Tyler, 884 F.2d 497 (9th Cir. 1989).

Although the Petitioners have suggested that immunity does not apply to ex parte hearings, the courts have not differentiated between an ex parte hearing and a hearing where all parties are present and represented by counsel. Indeed, this court noted in Burns that the circuits were unanimous that absolute immunity covered testimony and prosecutorial action before a grand jury. Burns v. Reed, 111 S.Ct. 1934, 1941 F.N. 6, (1991). Circuit courts have held that absolute immunity applies to other ex parte hearings and also to affidavits submitted to the court. Burns v. County of King, 883

F.2d 819 (9th Cir. 1989); Holt v. Castaneda, 832 F.2d 123 (9th Cir. 1987); Meyers v. Morris, 810 F.2d 1437, 1466 (8th Cir. 1987); Tripati v. INS, 784 F.2d 345, 348 (10th Cir. 1986); Malchowski v. City of Keene, 787 F.2d 704 (1st Cir. 1986).

Contrary to the Petitioners' suggestion, the Seventh Circuit Court of Appeals' decision is not in conflict with this Court's decision in Malley v. Briggs, 475 U.S. 335 (1986), and Illinois v. Gates, 462 U.S. 213 (1983). Both the District Court and Court of Appeals held that the Defendant caseworker acted in an objectively reasonable fashion in investigating and obtaining the detention order for the Petitioners' children. These actions were not based upon an uncorroborated informant's tip as in Gates. Both the District Court and the Court of Appeals

held that there was substantial supporting and corroborating evidence to support the anonymous tip given to the caseworker and reasonable cause to seek the detention order.

C. THE CASEWORKER WAS ENTITLED TO JUDGMENT UNDER EITHER QUALIFIED OR ABSOLUTE IMMUNITY.

The District Court entered judgment for the caseworker solely upon the Doctrine of Qualified Immunity finding that the Seventh Circuit had not specifically addressed the issue. The Court held that the conduct of the caseworker was objectively reasonable and that the Petitioners failed to set forth in any case or otherwise that the Defendant violated a right which was clearly established at the time in a particularized sense. (App. 65-70) Furthermore, the Seventh Circuit applied qualified immunity and found

that the caseworker's actions were objectively reasonable in the investigation, initiation of the proceedings and detention of the children.

Although the Petitioners continue to argue in the Petition for Writ of Certiorari that the caseworker violated general rights of parenting, this Court has rejected the Petitioner's approach.

Anderson v. Creighton, 483 U.S. 635 (1987). Indeed, under the Petitioners' approach qualified immunity would cease to exist for a CHINS caseworker since all of their actions involve the general right of parenting.

The caseworker's conduct was objectively reasonable, indeed, the Seventh Circuit noted that the failure to provide education for the children would have been a sufficient reason alone to obtain custody even ignoring

all of the other dangers to the children's health and welfare. The Petitioners had removed the children from school without taking any action to furnish their children with an education and without explaining in any fashion how they intended to educate their children. The Court noted that even today the mothers have not explained how they were going to supply the required education. (App. 18, 19) The mothers admitted that they did not have the money to enroll the children in correspondence school nor were they even at a location long enough to utilize a correspondence school.

In addition to the education concern numerous other factors existed to corroborate and cause concern as to the health and welfare of the children. Not only had the caseworker received a tip that the children were hungry, but

investigation revealed that the house had been stripped and was uninhabitable. The Petitioners and their children had no money and no food. They had no clothes except what they were wearing, and the Petitioners planned to travel without means to provide for the children. (App. 17, 18)

After the detention order was signed by the State Court, the Petitioners abandoned their children, visiting only once in a year, and refused to participate in any fashion in the proceedings in front of the State Court until ten months later when they hired a lawyer but still failed to participate in person.

Thus the Petitioners had made no provision to provide for their children's education, for a place to live, for food, for shelter or

clothing. This was also an emergency situation since the group was constantly moving and if the Welfare Department had not acted immediately, there would have been no way to locate or protect the children. Thus, even under qualified immunity the caseworker was entitled to judgment under Harlow v. Fitzgerald, 457 U.S. 800 (1982). This Court has noted that only the plainly incompetent or those who knowingly violate the law will not be protected by qualified immunity.

Malley v. Briggs, 475 U.S. 335, 341 (1986). Neither applies in this case.

**D. THIS CASE DOES NOT RAISE A NEW ISSUE FOR THIS COURT.**

The Seventh Circuit Court of Appeals did not decide whether a Welfare caseworker has an obligation in a civil case to alert the adversary to exculpatory evidence or inform the

court of exculpatory evidence. The Petitioners argue that this Court's opinions in Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Agurs, 427 U.S. 97 (1976), which decide the issue in a criminal case, creates this obligation. The Seventh Circuit did not decide this issue since it was unnecessary to its decision. This Court has already ruled that both a prosecutor and witness have absolute immunity under 42 U.S.C. 1983 for allegations of false testimony or withholding exculpatory evidence. Imbler, Supra, Briscoe, Supra, and Burns, Supra. Thus, the Seventh Circuit's decision is consistent with the prior decisions of this Court and there is no need to determine whether there is a comparable civil duty since it does not affect the issues or outcome in this case.

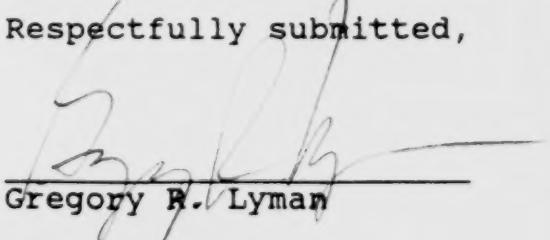
## VII. CONCLUSION

Manetta Tucker contends that both the District Court and the Seventh Circuit Court of Appeals correctly entered judgment on her behalf.

Manetta Tucker would respectfully suggest that this case does not meet any of the criteria this Court normally utilizes in accepting a case for review pursuant to a Writ of Certiorari.

Manetta Tucker would respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,



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